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No. 81-10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

ROBERT LORRAINE STALLARD,

Appellant,

vs.

CAROLYN FRANKLIN STALLARD,

Appellee.

On Appeal from the Supreme Court of Virginia

JURISDICTIONAL STATEMENT

ROBERT L. STALLARD
Route 1, Box 262
Middletown, Virginia 22645
(703) 367-2924

QUESTION PRESENTED

Did the Trial Court commit reversible error and violate the Fourteenth Amendment to the Constitution of the United States in ruling that your Appellant should not be granted a divorce a vinculo matrimonii based on desertion and adultery by Appellee and should pay the attorney fees for Appellee when Appellee deserted your Appellant, committed adultery during the marriage, and is gainfully employed?

PARTIES TO THE PROCEEDING

Supreme Court of Virginia
Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

John R. Prosser, Esquire
Counsel for Appellee
Post Office 848
Winchester, Virginia 22601

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JUDGEMENTS RENDERED

Denial of PETITION FOR APPEAL by Virginia Supreme Court

September 5, 1980

Denial of PETITION FOR REHEARING by Virginia Supreme Court

October 10, 1980

Orders from Warren County Circuit Court dated January 24, 1980 and February 5, 1980.

GROUNDS FOR JURISDICTION OF COURT

The grounds on which the jurisdiction of this Court is invoked is a violation of Fourteenth Amendment to the Constitution of the United States. The date of entry of the judgement sought to be reviewed is October 10, 1980.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No.

ROBERT LORRAINE STALLARD,

Appellant

vs.

CAROLYN FRANKLIN STALLARD,

Appellee

On Appeal from the Supreme Court of Virginia

JURISDICTIONAL STATEMENT

To the Honorable Justices of the

Supreme Court of the United States

Your Appellant, Robert Lorraine Stallard, respectfully, represents that he is aggrieved by certain orders entered by the Circuit Court of Warren County, Virginia in Chancery number 3647 on the 24th day of January, 1980, and the 5th day of February, 1980, wherein he was denied a divorce based upon desertion and adultery by Appellee, Carolyn Franklin Stallard, and was ordered to pay attorney's fee for the Appellee. No fault has been proven or argued of your Appellant, wherefore his rights for equal protection under the law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, have been violated.

Although your Appellant objected during the preliminary hearings and trial to the various decisions which

were rendered, he was overruled and denied. The Court based its decision on the fact that your Appellant is the husband. Such a decision is a violation of your Appellant's rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

MATERIAL PROCEEDINGS

The material proceedings in this matter are as follows:

Your Appellant, Robert Lorraine Stallard, filed a Bill of Complaint in Chancery number 3647, in Warren County, Virginia, on July, 1978, as a result of his wife, Carolyn Franklin Stallard, Appellee, deserting him on or about September 1, 1977. In your Appellant's Bill of Complaint he prayed for a divorce a mensa et thoro based on willful desertion, Virginia Code Section 20-95, by Appellee. He was denied. Your Appellant later filed an amended Bill of Complaint in which he alleged desertion and adultery, Virginia Code Section 20-91, by Appellee. He again prayed for a divorce a mensa et thoro but again was denied. Child

custody and support were awarded to Appellee pendente lite.

On December 21, 1979, the case was heard before the Warren County Circuit Court. The Complainant, your Appellant, acting pro se, because he could not afford a attorney, presented evidence that his wife, the Defendant, had on or about September 1, 1977, deserted him and established a new residence for herself and had on hundreds of occasions from September 1, 1977, to December 21, 1979, committed adultery with one, Wendell R. Barney, Jr. The Court ruled against the allegations of desertion and adultery and ordered that the parties be granted a divorce a vinculo matrimonii and that the Complainant pay $1,635.00 for the Defendant's attorney's fees. No

argument was presented to prove that the Complainant was at fault. The Complainant's wife chose to desert him even though the Complainant pleaded with her to remain. There was no basis for her to desert. The Defendant abandoned your Appellant and decided to terminate the marriage without cause or justification.

ERROR ASSIGNED

The Trial Court committed reversible error in ruling for the Defendant when trial testimony proved that the Defendant deserted the Complainant and committed adultery. Since no fault was proven or argued of the Complainant, his rights for equal protection under the law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, have been violated.

STATEMENT OF FACTS

The Defendant without just cause or excuse, did willfully and voluntarily abandon the Complainant on or about September 1, 1977. The Defendant did not establish evidence of justification which would have permitted her leaving the marriage. The Complainant did not consent to her departure and on numberous occasions pleaded with the Defendant to return home. On each occasion the Defendant refused.

The Complainant has shown through trial testimony that his wife did on or about September 1, 1977, desert him without cause or justification and established a separate residence at a location other than his home.

When the Complainant's wife deserted him he was running a farm with the help

of his wife and two daughters, as well as commuting 110 miles per day to a 40+ hours-a-week job. Her desertion has caused a tremendous hardship and sacrifice on his part to continue running the farm by himself as well as continuing the other job.

The Defendant did not present evidence, testimony nor make any statements as to why she deserted. Her leavetaking was not justified and was without cause.

The Complainant's wife admitted to the Complainant that she committed adultery and as the trial testimony shows, she had hundreds of times, places and opportunities to commit adultery. The Court has chosen to ignore this in its ruling.

The Court stated to the Complainant

that he may have been threatening his wife with a gun or standing over her with an ax telling her to get, or thrashing her good and proper three times a day. The Court also stated in reference to attorney's fees, that whenever the wife shows a need it is the responsibility of the husband to meet those needs.

ARGUMENT

Your Appellant should be granted a divorce based on desertion and adultery by Appellee and should not be required to pay Appellee's attorney's fees. Trial testimony has shown that Carolyn Franklin Stallard deserted your Appellant of her own free will without cause or reason. Trial testimony also indicates that Carolyn Franklin Stallard committed adultery during her marriage to your Appellant.

The Trial Court apparently assumed that the separation was by mutual consent. It certainly was not. Your Appellant pleaded with the Appellee before she deserted, to return. On all occasions, she refused.

In Bailey vs. Bailey, 62 Va. (21

Gratt.) 43, 47, the Court stated, "Desertion is a breach of matrimonial duty, and is composed first, of the actual breaking off of the matrimonial cohabitation and secondly, an intent to desert in the mind of the offender. Both must combine to make the desertion complete". The Appellee certainly broke off the matrimonial cohabitation and admitted during trial testimony that her intent to desert was her own decision. So, her actions constituted desertion.

In Miller vs. Miller, 196 Va. 698 (1955), the Court stated, "We cannot agree with the Trial Court that the only reasonable conclusion from this evidence is that the separation of this couple was prearranged and by mutual consent. On the contrary,

it establishes, we think, a desertion on the part of the wife which entitles the husband to a divorce. It is true, as the Trial Court observed, that the husband voiced no objection to his wife's departure at the time she left, but it was her conduct and purpose and not his state of mind that determined whether there was desertion. He was not required either then or thereafter to make an offer of reconciliation if she in fact deserted him." Not only did Carolyn Franklin Stallard desert your Appellant, but he made numerous attempts at reconciliation with her only to be rejected. Desertion was shown through trial testimony to be willful on the part of the Appellee.

The Court stated to the Complainant

that he may have been threatening his wife with a gun or standing over her with an ax telling her to get, or thrashing her good and proper three times a day. The Court also stated, in reference to attorney's fees that whenever the wife shows a need it is the responsibility of the husband to meet those needs. Such statements are prejudicial and a clear violation of your Appellant's rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

In Graham vs. Graham, 210 Va. 608 (1970), the Court stated, "... plaintiff alleged desertion by defendant and also alleged that such desertion was without justification or cause. The latter allegation was unnecessary, for Code

Section 20-95 provides that a divorce from bed and board may be decreed for...abandonment or desertion". In the instant case, your Appellant was abandoned by the Appellee as was pointed out in your Appellant's original Bill of Complaint and in trial testimony.

No evidence or testimony was ever presented which would prove that your Appellant was at fault in any manner whatsoever. The lower Court has denied your Appellant's Constitutional rights by stating that he was responsible because he was the husband and earned more money than his wife. Your Appellant's wife has had a Master's Degree for six years and is capable of earning several times what she is presently earning. The fact that she is underemployed should not shift the

responsibility for payment of attorney's fees from her to your appellant. The Appellee decided to terminate the marriage, not your Appellant. Since your Appellant's wife deserted him without cause or justification and hired an attorney, she is clearly responsible for her attorney's fees as well as those of your Appellant. In Stolfi vs. Stolfi, the Court stated, "We have repeatedly held that one spouse is not justified in leaving the other unless the conduct of the other is sufficient to establish the foundation of a judicial proceeding for divorce". No argument was ever proven or presented against your Appellant which would show that his conduct was the foundation of a judicial proceeding for divorce. The Appellee's

leavetaking was not justified and therefore her departure constituted desertion.

In Dowell vs. Dowell, Chancery number 55797, Fairfax County, Virginia (1979), the wife (Complainant/Cross-Defendant) deserted her husband for physical and mental cruelty and yet the Court decided for the husband (Defendant/ Cross-Complainant) based on the fact that the wife was not justified in deserting. In the instant case no physical or mental cruelty was argued or implied of your Appellant. The Appellee's leavetaking clearly constitutes desertion.

It is clear that in the instant case, had the husband/wife roles been reversed, the husband would have been charged with desertion. Yet, through

no fault of his own, the husband has been asked to accept the fact that his wife deserted him without remedy, his infant daughter is no longer living at home with him, his wife had committed adultery and further, that he has been ordered to pay his wife's attorney's fees. This cannot be the end result of a fair and just Court ruling.

The Fourteenth Amendment to the Constitution of the United States guarantees equal protection under the law for all citizens of the United States. Your Appellant's rights have been violated by the Circuit Court of Warren County, Virginia, by ruling against your Appellant simply because he is the husband.

CONCLUSION

The Appellant respectfully submits that the Trial Court erred in ruling for the Appellee when your Appellant was never proven at fault and that your Appellant's Constitutional Rights have been violated.

Your Appellant begs the Court to reverse the decisions in the Orders of the lower Court regarding desertion, adultery and payment of attorney's fees. Your Appellant also begs the Court to grant him reasonable alimony payments retroactive to September 1, 1977 and payment of his attorney's fees.

Should the Court not decide in favor of your Appellant, your Appellant begs the Court to direct the lower Court to retry the case based on the fact that

your Appellant did not have legal representation at the trial and did not understand the legal requirements for proving desertion and adultery.

Your Appellant respectfully requests that the Court grant him the privilege of being heard orally before the Court.

RESPECTFULLY SUBMITTED,

Robert L. Stallard

ROBERT L. STALLARD,
Pro Se

APPENDIX

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IN THE SUPREME COURT OF VIRGINIA

ROBERT L. STALLARD,

Complainant,

vs. Record No. 800607

CAROLYN F. STALLARD,

Defendant.

NOTICE OF APPEAL

You are hereby notified that the Complainant, Robert L. Stallard, intends to appeal this case to the United States Supreme Court. You are further notified that the Transcript for the above styled case will be filed with the Clerk and used in the Appeal.

CERTIFICATE

I hereby certify that on October 22, 1980, I mailed a true copy of the Notice of Appeal to John R. Prosser, Counsel for Defendant, P. O. Box 848, Winchester, Virginia. 22601.

Robert L. Stallard

ROBERT L. STALLARD, Pro Se

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 5th day of September, 1980.

Robert L. Stallard, Appellant,

against Record No. 800607
Circuit Court No. 3647

Carolyn F. Stallard, Appellee.

From the Circuit Court of Warren County

Finding no reversible error in judgment complained of, the Court refuses the petition for appeal filed in the above-styled case.

A Copy,

Teste:

Allen L. Lucy, Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 10th day of October, 1980.

Robert L. Stallard, Appellant,

against Record No. 800607
Circuit Court No. 3647

Carolyn F. Stallard, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 5th day of September, 1980, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Allen L. Lucy, Clerk

V I R G I N I A:

IN THE CIRCUIT COURT OF WARREN COUNTY

ROBERT L. STALLARD,

Complainant

vs. IN CHANCERY NO. 3647

CAROLYN F. STALLARD,

Defendant.

D E C R E E

On the 21st day of December, 1979, came the parties hereto, the Complainant in person and acting pro se and the Defendant in person and by counsel, upon the papers previously filed in this case for the trial of this case.

Evidence was had ore tenus on the matters contained in the Complainant's Bill of Complaint and at the conclusion of the evidence presented by the Complainant, the Defendant did move to strike the Complainant's evidence insofar

as it related to the charge of adultery, which motion the Court sustained and the allegation of adultery was striken from the pleadings.

WHEREUPON, the Defendant did then introduce evidence in support of her cross-bill and argument was had by the Complainant and counsel for the Defendent.

Upon due consideration whereof, it appearing to the Court and the Court doth decide independently of the admissions of either party in the pleadings or otherwise:

1. That the parties were married in Roanoke, Virginia on November 28, 1957.

2. That both parties are members of the white race, over the age of eighteen (18) years, and neither is a member of the Armed Forces of the United States.

3. There is now one child born of

this marriage under the age of eighteen (18) years, namely Janice Karen Stallard, born April 9, 1962.

4. That the parties last cohabited as husband and wife on September 1, 1977, in Warren County, Virginia and having lived separate and apart continuously and without interruption since that time, a period in excess of one (1) year.

5. That the Complainant and the Defendant are now, and have been for more than six (6) months prior to the institution of this suit, bona fide residents of and domiciled in the State of Virginia.

6. That your Complainant is now residing in Warren County, Virginia, and the Defendant is now residing in the City of Winchester, Virginia.

7. That the parties have lived separate and apart without cohabitation and without interruption since March 1, 1978 and there is no hope of reconciliation.

8. That the best interest and welfare of the infant child of the parties, Janice Karen Stallard, would be served by her custody being awarded to Carolyn F. Stallard, the Defendant herein, with reasonable visitition rights to the Complainant, Robert L. Stallard.

9. That Robert L. Stallard should pay the sum of Fifty Dollars ($50.00) per week to Carolyn F. Stallard until such child reached the age of eighteen (18) years or is otherwise emancipated and that the Complainant shall further pay all reasonable medical expenses for the said child Janice Karen Stallard

for a like period of time.

10. That the Complainant should pay a reasonable amount as attorney's fees to John R. Prosser, Esquire, counsel for Carolyn F. Stallard. The amount of attorney's fees to be awarded in this case will be decided later upon submission by counsel for the Defendant of an affidavit itemizing and detailing the nature and amount of legal fees in connection with the trial of this divorce case and the Court shall enter a later order awarding a specific sum as attorney's fees.

11. That the Defendant is entitled to a divorce a vinculo matrimonii from the Complainant on the grounds that the parties have lived separate and apart continuously and without interruption for a period in excess of one year.

WHEREFORE, it is hereby ADJUDGED, ORDERED and DECREED:

1. That the Defendant, Carolyn F. Stallard be, and she hereby is, awarded a divorce a vinculo matrimonii from Robert L. Stallard on the grounds that the parties have lived separate and apart without interruption for a period in excess of one (1) year, to-wit: Since September 1, 1977.

2. That the permanent care, custody and control of the child Janice Karen Stallard be, and hereby is, awarded to the Defendant, Carolyn F. Stallard with reasonable visitation rights to the Complainant Robert L. Stallard.

3. That the said Robert L. Stallard be, and hereby is, ordered to pay the sum of Fifty Dollars ($50.00) per week to Carolyn F. Stallard as child support

for the child Janice Karen Stallard until such child reaches the age of Eighteen (18) years or is otherwise emancipated, and further that the Complainant shall pay all reasonable medical expenses for the said child Janice Karen Stallard for a like period of time.

4. That the Complainant, Robert L. Stallard shall pay to John R. Prosser, Esquire, a sum to be determined later as attorney's fees in this action for the defendant Carolyn F. Stallard, upon submission by John R. Prosser, Esquire of a detailed statement itemizing the nature and amount of attorney's fees in connection with the case.

5. That this cause be referred to the Juvenile and Domestic Relations

Court for Warren County, Virginia for consideration of all matters in the future in this cause pertaining to the maintenance, support, care and custody of the aforesaid child of the parties and for enforcement, modification or revision of this decree or any decrees entered in the future in this cause, pursuant to Section 20-79(c), Virginia Code Ann. The Clerk is directed to send an attested copy of this decree to the Juvenile and Domestic Relations District Court for Warren County.

THIS DECREE IS FINAL insofar as it pertains to the matters specifically addressed herein, the question of attorney's fees being the only question left open for the Court to resolve.

The Court further orders that a copy of the Decree be served by the Sheriff of Warren County on the

Complainant, Robert L. Stallard.

ENTER this 24th day of January, 1980.

s/ Duncan Gibb
Judge

SEEN:

John R. Prosser, Esquire
Counsel for Complainant

CERTIFIED TO BE A TRUE COPY:

Teste: Sheila F. Kaufman
Deputy Clerk

V I R G I N I A :

IN THE CIRCUIT COURT OF WARREN COUNTY

ROBERT L. STALLARD,

Complainant,

vs. IN CHANCERY NO. 3647

CAROLYN F. STALLARD,

Defendant.

FINAL DECREE

On the 24th day of January, 1980, came the parties hereto, the Complainant, Robert L. Stallard, appearing in person and pro se, for the purpose of resolving the question of attorney's fees, which would be allowed to the defendant by the Court. Upon an examination of the Affidavit of the defendant's counsel, and upon entertaining comments by the complainant, the Court finds that the hours spent by counsel for Carolyn F. Stallard and the hourly rate of

$50.00 per hour by counsel are reasonable. The Court finds that there is no evidence in contravention to the Affidavit filed by Counsel.

The Court further finds a need on the part of Carolyn F. Stallard for assistance in paying counsel fees and the Court further finds that Robert L. Stallard has the ability to pay such attorney's fees.

WHEREFORE, the Court doth hereby ADJUDGE, ORDER and DECREE that the Complainant, Robert L. Stallard, pay directly to John R. Prosser, Esquire, attorney for the Defendant, Carolyn F. Stallard, the sum of $1,635.00 as attorney's fees for service rendered the Defendant in this cause.

The Court notes the objection by Robert L. Stallard to its ruling as set

forth above, the objection being to the concept of paying attorney's fees for the Defendant in this case since the Defendant, Carolyn F. Stallard, contracted with her counsel independently and consequently the fees for his service should be her responsibility alone.

Nothing further remaining to be done in this cause, the Clerk is directed to close the file and place it among the Chancery causes ended, sending copies hereof to defendant's counsel and to complainant.

THIS IS A FINAL DECREE

ENTER this 5 day of February, 1980

Duncan C. Gibb
Judge

SEEN:

John R. Prosser, Esquire
Counsel for Defendant

SEEN AND OBJECTED TO: as modified in par. 3 line 4 above and par 4, lines 2, 3, 4 and 5.

Robert L. Stallard,
Complainant.

CERTIFIED TO BE A TRUE COPY:

Teste: Sheila F. Kaufman
Deputy Clerk

CERTIFICATE

I hereby certify that I have this eighth day of January, 1981, fully complied with Rule 28 of the Supreme Court of the United States by mailing three copies of this JURISDICTIONAL STATEMENT to the Counsel for the Appellee, John R. Prosser, Post Office Box 848, Winchester, Virginia 22601, prior to mailing forty (40) copies of the JURISDICTIONAL STATEMENT to the office of the Clerk of the Supreme Court of the United States, Supreme Court Building, Washington, D. C. 20543.

Robert L. Stallard

ROBERT L. STALLARD,
pro se